

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF &
APPENDIX**

75-7554

B
P/S

In The
United States Court of Appeals
For The Second Circuit

HARRY JACOBSON,

Appellant,

vs.

CASPAR WEINBERGER, Secretary Health, Education &
Welfare,

Appellee.

BRIEF AND APPENDIX FOR APPELLANT

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A P P E N D I X

USCA TITLE 42 20CFR

Sec.404.241(a)(c)

Sec.404.260

Sec.404.261(a)(b)(c)(d)

Sec.404.267

Sec.404.268

Sec.404.433

Sec.404.435(a)6(b)(6)

AMENDMENTS OF 1960

AMENDMENTS OF 1958

42USC Sec.415 amended 1958

42USC Sec.415 amended 1960

Sec.215(a)(1)(2)

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Sec.215(g)

Sec.202(a)(3)

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A P P E N D A G E S

Section 404.241 USCA TITLE 42 200FR

Section 404.260

Section 404.261

Section 404.267

Section 404.268

Section 404.433

Section 404.435

§ 404.236 **Determination of primary insurance amount for conversion table (column II)**

For purposes of § 404.234(b), the primary insurance amount of an individual shall be determined under § 404.202(a) (2); except that if such individual did not become entitled to (without the application of section 202(j) (1) of the act [42 U.S.C.A. § 402(j) (1)]) old-age insurance benefits under section 202(a) of the act [42 U.S.C.A. § 402(a)] until after August 1954, or in death cases, died after August 1954 without becoming entitled to such benefits, then such individual's average monthly wage shall be determined under the provisions of §§ 404.237 to 404.244, but without regard to the provisions of § 404.242.

§ 404.237 **Method of determining average monthly wage**

An individual's average monthly wage, for the purpose of computing his primary insurance amount, is computed by dividing his total wages and self-employment income after his starting date and prior to his closing date by the number of months elapsing after such starting date and before his closing date, excluding from such elapsed months any month in any year prior to the year in which such individual attained the age of twenty-two, but only if less than 2 quarters of such prior year are quarters of coverage. If the total number of elapsed months is less than 18, the divisor shall be increased to 18.

§ 404.238 **Wages and self-employment income used in determining average monthly wage**

For purposes of § 404.237, "total wages" and "total self-employment income" of an individual shall include all wages and self-employment income after such individual's starting date and before his closing date and any other credits established for his account as specified in paragraphs (b), (c), (d) and (e) in § 404.206. "Total wages" and "total self-employment income" of an individual shall not include:

(a) The excess over \$3,600 of wages paid in and self-employment income credited to any calendar year after 1950 and prior to 1955, or

(b) The excess over \$4,200 of wages paid in and self-employment income credited to any calendar year after 1954, or

(c) If such individual's closing date is determined under paragraphs (a), (c) or (d) of § 404.241, and he has self-employment income in a taxable year which begins prior to such closing date and ends after the last day of the month preceding the month in which he becomes entitled to old-age insurance benefits under section 202 (a) [42 U.S.C.A. § 402(a)], his self-employment income in such taxable year except as provided in § 404.268, or

(d) The excess over \$2,100 of wages paid in and self-employment income credited to the year 1956, but only if with respect to such individual's average monthly wage, a closing date pursuant to § 404.241(d) is used.

§ 404.239 Rounding average monthly wage

If the average monthly wage as computed under § 404.237 is not a multiple of \$1, it is reduced to the next lower multiple of \$1.

§ 404.240 Starting date

An individual's "starting date" shall be whichever of the following results in a higher primary insurance amount:

(a) December 31, 1950, or

(b) The last day of the year in which he attains the age of twenty-one if such last day is after December 31, 1950, except that if such individual's primary insurance amount is determined by use of the conversion table in § 404.234 and under the provisions of § 404.235, his starting date shall be December 31, 1936.

§ 404.241 Closing date

An individual's closing date shall be whichever of the following results in the highest primary insurance amount:

(a) The first day of the year in which he died or became entitled to old-age insurance benefits under section 202(a) [42 U.S.C.A. § 402(a)], whichever first occurred, or

(b) The first day of the first year in which he both was a fully insured individual and had attained age 65, or

(c) The first day of the year following the year referred to in paragraph (a) of this section, but only if the Secretary determines, on the basis of evidence readily available to him at the time of the computation of the individual's primary insurance amount, that the use of a closing date under this paragraph will result in the highest primary insurance amount, or

(d) July 1, 1956, but only if the individual died or became (without the application of section 202(j) (1) of the act [42 U.S.C.A. § 402(j) (1)]) entitled to old-age insurance benefits in 1956 and he had 6 quarters of coverage after 1954 and prior to the quarter following the quarter in which he died or became entitled to old-age insurance benefits, whichever first occurred.

If an individual's closing date is determined to be the date specified in paragraph (d) of this section, then such individual's starting date shall be December 31, 1954, instead of the day specified in § 404.240, and his primary insurance amount shall, after the determination of his average monthly wage, be computed under the provisions of § 404.232(a).

§ 404.242 **Exclusion from computation of average monthly wage**

Except as may be otherwise provided, in the case of any individual to whom the provisions of paragraph (a) (but without regard to whether he has 6 quarters of coverage after 1950) or (b) of § 404.233 are applicable, the Secretary shall determine the 4 or fewer calendar years after his starting date and prior to his closing date which, if the months of such years and his wages and self-employment income for such years were excluded in computing his average monthly wage, would produce the highest primary insurance amount. Such months and such wages and self-employment income shall be excluded for purposes of computing such individual's average monthly wage. The maximum number of calendar years determined under the first sentence of this section shall be 5 instead of 4 in the case of any individual who has not less than 20 quarters of coverage prior to the date he became entitled to old-age insurance benefits or died, whichever first occurred.

§ 404.243 **Average monthly wage for conversion table**

For the purpose of computing maximum benefits, the average monthly wage of an individual whose primary insurance amount is determined by use of the conversion table (§ 404.234) is the appropriate amount in column IV of such table.

§ 404.244 **Average monthly wage of veteran of World War II**

Where entitlement to any monthly insurance benefit or a lump sum is based on the guaranteed-insured status granted to a veteran of World War II under the provisions of section 217(b) of the act [42 U.S.C.A. § 417(b)] (see § 404.1315) the average monthly wage of such veteran shall be deemed to be \$160.

RECOMPUTATION OF BENEFITS

§ 404.260 **Applicability**

An individual entitled to old-age insurance benefits may secure a recomputation of his primary insurance amount under §§ 404.261 to 404.268. A survivor of an individual may secure a recomputation of such individual's primary insurance amount under §§ 404.269 to 404.275.

§ 404.261 Recomputation to include wages and self-employment income in the year of entitlement

(a) Conditions. Recomputation is permitted under this paragraph if:

(1) The individual files application therefor after the year in which he became entitled (without the application of section 202 (j) (1) of the act [42 U.S.C.A. § 402(j) (1)]) to old-age insurance benefits under section 202(a) [42 U.S.C.A. § 402(a)],

(2) He became entitled to such benefits after August 1954, and

(3) His closing date for purposes of computing his average monthly wage and primary insurance amount was determined under paragraph (a), (b), or (d) of § 404.241.

(b) Method of computation. The computation shall be made in the same manner as is provided in §§ 404.232 to 404.242, except that his closing date for purposes of § 404.241 shall be the first day of the year following the year in which he became entitled to old-age insurance benefits.

(c) Effective date. Such recomputation shall be effective for and after the first month in which his entitlement to old-age insurance benefits was effective, but in no event for any month prior to the twenty-fourth month before the month in which the application specified in paragraph (a) of this section is filed.

(d) Applicability to other recomputations. The provisions of this section shall be applicable to a recomputation under §§ 404.262, 404.263 (except a recomputation under paragraph (c) thereof) and § 404.264 (but only if the primary insurance amount was computed under the method specified in either paragraph (b) (2) or (3) of such section) in the same manner as though the individual become entitled in the year in which he filed the application for the recomputation specified in such sections.

§ 404.262 Recomputation based on 6 quarters of coverage after June 30, 1953

(a) Conditions. An individual entitled to old-age insurance benefits under section 202(a) [42 U.S.C.A. § 402(a)] may have his primary insurance amount recomputed under this paragraph if:

(1) He files an application therefor after August 1954,

(2) He was entitled, or upon filing application therefor, would have been entitled to old-age insurance benefits for August 1954,

(3) He has 6 quarters of coverage after June 30, 1953, and

(4) The provisions of § 404.242 were not previously applicable to the computation of his primary insurance amount.

(b) Method of computation. The recomputation shall be made in the same manner as is provided in §§ 404.232 to 404.242 for the com-

§ 404.265

in §§ 404.206 to 404.210 for the computation of the primary insurance amount, except that for purposes of § 404.209 such individual's closing date shall be the first day of the quarter in which he became entitled to old-age insurance benefits. Such recomputation shall be effective for and after the first month of entitlement to old-age insurance benefits. For months after August 1954, such amount shall be determined through the use of the conversion table under § 404.234.

§ 404.267 Recomputation to include self-employment income

An individual who became entitled to an old-age insurance benefit in 1952, or in 1953 in a taxable year which began in 1952 (and without the application of section 202(j) (1) [42 U.S.C.A. § 402(j) (1)]) and who had self-employment income for a taxable year which ended within or with 1952 or which began in 1952 may have his old-age insurance benefit recomputed if he files an application therefor after the close of such taxable year. Such recomputation shall be made in the manner as is provided in §§ 404.202 to 404.210 (but without regard to section 215(b) (4) (A) of the act [42 U.S.C.A.

b) (4) (A)] in effect prior to the Social Security Amendments of 1954 [see Popular Name Table Volume]; see § 404.206(a)) for the computation of the primary insurance amount, except that, for purposes of § 404.209, such individual's self-employment income closing date shall be the day following the quarter with or within which such taxable year ended, and for purposes of § 404.206, the self-employment income for any subsequent taxable year shall not be taken into account. Such recomputation shall be effective for and after the first month in which such individual became entitled to old-age insurance benefits; for months after August 1954, such amount shall be determined through the use of the conversion table under § 404.234.

§ 404.268 Recomputation to include self-employment income excluded in previous computation

(a) Conditions and effective date. Recomputation is permitted under this section, if, in determining an individual's average monthly wage, self-employment income for the taxable year ending after the month before the month in which he became entitled to old-age insurance benefits was not, pursuant to the provisions of § 404.238 (c), included in his total self-employment income. Such recomputation shall be made after the close of such taxable year to take into account such self-employment income in such taxable year as is, pursuant to section 212 of the act [42 U.S.C.A. § 412], allocated to the calendar quarters prior to the closing date used in determining such individual's average monthly wage. Such recomputation shall be effective for and after the first month in which the individual became entitled to old-age insurance benefits.

(b) **Applicability to other recomputations.** The provisions of this section and § 404.238(c) shall be applicable to a recomputation under §§ 404.262, 404.263, 404.264 (but only if the primary insurance amount was computed under the method specified in either paragraph (b) (2) or (3) of such section) and § 404.265 (but only where the provisions of paragraph (b) (4) apply) in the same manner as though the individual became entitled in the year in which he filed the application for the recomputation specified in this section

§ 404.269 Recomputation at the request of a survivor of an individual to include wages and self-employment income in the year of entitlement or death

(a) **Conditions.** Recomputation is permitted under this paragraph if:

(1) The individual on the basis of whose wages and self-employment income recomputation of the primary insurance amount is requested died after August 1954;

(2) The last previous computation or recomputation of his primary insurance amount, if any, was based on a closing date determined under paragraphs (a), (b), or (d) of § 404.241, and

(3) A survivor entitled to monthly benefits or a lump-sum death payment on the basis of such individual's wages and self-employment income files an application for such recomputation. Notwithstanding the previous provisions of this paragraph a recomputation under this section is not permitted in the case of an individual entitled to old-age insurance benefits in the month of death unless such individual became entitled to such benefits after August 1954 or if entitled prior to September 1954, such individual's primary insurance amount was recomputed on the basis of an application filed after August 1954 under any of the following sections: §§ 404.262, 404.263, 404.264 (but only if the primary insurance amount was computed under the method specified in either § 404.264(b) (2) or (3)), §§ 404.270, 404.271, 404.272 (but only if the primary insurance amount was computed under the method specified in either paragraph (b) (1) (ii) or (iii) of § 404.272).

(b) **Methods of computation.** Such recomputation shall be made in the same manner as is provided in §§ 404.232 to 404.242 for the computation of the primary insurance amount except that the individual's closing date shall be:

(1) The day following the year of such individual's death, if such individual was not entitled to an old-age insurance benefit, or

(2) The day following the year in which such individual became entitled to old-age insurance benefits, if such individual's primary insurance amount has not been recomputed under any of the provisions specified in the last sentence of paragraph (a) of this section.

Where the excess amount so figured is not a multiple of \$1, it is reduced to the next lower dollar. Thus, in the usual 12-month-taxable-year case, an individual's excess earnings are computed as follows:

- (a) \$1 for each \$2 of earnings over \$1,500, up to and including \$2,700; and
- (b) \$1 for each \$1 over \$2,700.

§ 404.433 Excess earnings; defined for taxable years beginning after December 1960, or ending after June 1961—up to and including taxable years ending December 31, 1965

For taxable years beginning after December 1960, or ending after June 1961; up to and including taxable years ending December 31, 1965, an individual's excess earnings in a taxable year are the amount of his earnings (as described in § 404.429) for such year that exceed \$100 times the number of months in his taxable year, except that his excess earnings do not include an amount equal to one-half of the first \$500 of such excess amount (or equal to one-half of the entire excess amount if the excess is less than \$500). Where the excess amount so figured is not a multiple of \$1, it is reduced to the next lower dollar. Thus, in the usual 12-month-taxable-year case, an individual's excess earnings are computed as follows:

- (a) \$1 for each \$2 of earnings over \$1,200 up to and including \$1,700; and
- (b) \$1 for each \$1 over \$1,700.

§ 404.434 Excess earnings; method of charging

(a) Months charged. For purposes of imposing deductions for taxable years after 1960, the excess earnings (as described in §§ 404.432 and 404.433) of an individual are charged to each month beginning with the first month the individual is entitled in the taxable year in question and continuing, if necessary, to each succeeding month in such taxable year until all of the individual's excess earnings have been charged. Excess earnings, however, are not charged to any month described in §§ 404.435 and 404.436.

(b) Amount of excess earnings charged—(1) Insured individual's excess earnings. The insured individual's excess earnings are charged on the basis of \$1 of excess earnings for each \$1 of monthly benefits to which he and all other persons are entitled (or deemed entitled—see § 404.420) for such month on the insured individual's earnings record. (See § 404.439 where the excess earnings for a month are less than the total benefits payable for that month.)

(2) Excess earnings of beneficiary other than insured individual. The excess earnings of a person other than the insured individual are charged on the basis of \$1 of excess earnings for each \$1 of

monthly benefits to which he is entitled (see § 404.437) for such month. The excess earnings of such person, however, are charged only against his own benefits.

(3) Insured individual and person entitled (or deemed entitled) on his earnings record both have excess earnings. If both the insured individual and a person entitled (or deemed entitled) on his earnings record have excess earnings (as described in §§ 404.432 and 404.433), the insured individual's excess earnings are charged first against the total family benefits payable (or deemed payable) on his earnings record, as described in subparagraph (1) of this paragraph. Next, the excess earnings of a person entitled on the insured individual's earnings record are charged (as described in subparagraph (2) of this paragraph) against his own benefits, but only to the extent that his benefits have not already been charged with the excess earnings of the insured individual. See § 404.441 for an example of this process and the manner in which partial monthly benefits are apportioned.

§ 404.435 Excess earnings; months to which excess earnings cannot be charged

(a) Taxable years ending after 1965. Notwithstanding any of the provisions described in this subpart, an individual's excess earnings in a taxable year ending after 1965 are not charged to any month in which he:

- (1) Was not entitled to a monthly benefit;
- (2) Was deemed not entitled to benefits (due to noncovered work outside the United States, no child in care, or refusal of rehabilitation, as described in § 404.436);
- (3) Was age 72 or over;
- (4) Was entitled to payment of a disability insurance benefit;
- (5) Was age 18 or over and entitled to a child's insurance benefit based on disability; or
- (6) Did not engage in self-employment (see paragraphs (c) and (e) of this section) and did not render services for wages (see paragraph (d) of this section) of more than \$125.

(b) Taxable years beginning after 1960 or ending after June 1961 up to and including taxable years ending before 1966. Notwithstanding any of the provisions described in this subpart, an individual's excess earnings in a taxable year beginning after December 1960, or ending after June 1961; up to and including taxable years ending before 1966 are not charged to any month in which the individual:

- (1) Was not entitled to benefits;
- (2) Was deemed not entitled to benefits (see § 404.436);
- (3) Was age 72 or over;

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

-----X
HARRY JACOBSON, :

APPELLANT :

CASE NO. 75-7554

-v-

AFFIDAVIT

CASPAR WEINBERGER, Secretary, :
Health, Education & Welfare :
APPELLEE
-----X

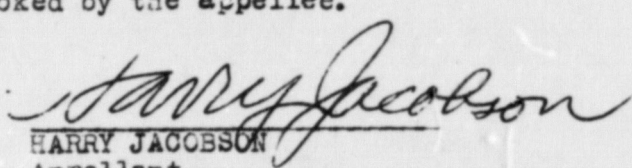
STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

HARRY JACOBSON, being duly

sworn, deposes and says:

1. I am a self employed wage earner.
2. As such, I was not properly insured.
3. Appellee failed to factorize regulations, properly establishing an equitable plan of insurance for me.
4. Appellee misconstrued my application for old age insurance.
5. Such misconstruance affected my ability to obtain my equity if in a proper plan of insurance.
6. My appeal appendices the laws, rules and regulations overlooked by the appellee.

Sworn to before me this
21 day of October, 1975


HARRY JACOBSON
Appellant


MIRIAM GERTLER
Notary Public, State of New York
No. 24 1415290
Qualified in Kings County
Cert. Filed in New York County
Commission Expires March 30, 1977

Quoting from the Court opinion in the ordinary case, "Lastly, in his supplementary affidavit, Jacobson argues that defendant erred in denying him all benefit payments in 1970 because of excess earnings. 203(b). It is clear from a review of the administrative hearing decision that the Secretary made no express findings of fact as to the applicability of 203(b) to this case. Since the jurisdiction of this Court is limited to reviewing the administrative decision, it has no authority to hear Jacobson's argument de novo".

The Court borrowed its opinion that my argument is de novo, as will be understood from the evidence of law hereinafter given.

Appellant is a self employed wage earner, and as such has not been given proper legal consideration in respect to the law of largest primary insurance amount, reading "Any recomputation under this subsection shall be effective only 215(f)(4) 203(b)(2)(A) if such recomputation results in a higher primary insurance amount."

I was born in January 1901.
In January 1966 I attained retirement age 65.
A man born in January 1901 is entitled to old age insurance benefits for each month beginning with the first month after August 1950 in which such individual becomes so entitled, which in my case is January 1965. 202(i)(1)

THE LAW OF COMPUTATION OF A PRIMARY INSURANCE AMOUNT FOR THE MONTH OF JANUARY 1965 IS TO BE FOUND ONLY IN THE AMENDMENTS OF 1958, ITS AMENDED SECTION 215(a) COLUMN III.

74 Stat. 960 In 1960, computation of a primary insurance amount for the month of January 1965 was reenacted.

In substance and effect such reenactment ruled that for purposes of an individual's benefit computation years, they were to be those for which the total of his wages and self employment income is the largest. 303(a), 215(b)(2) (B)

74 Stat.960
Sec.303(a),
Sect.215(b)
(2)(C)

Further, that computation base years include only calendar years occurring after December 31, 1950 and prior to the year in which the individual became entitled to old age insurance benefits, except that the year in which the individual became entitled to old age insurance benefits shall be included as a computation base year if the Secretary determines, on the basis of evidence available to him at the time of the computation of the primary insurance amount for such individual, that the inclusion of such year would result in a higher primary insurance amount.

See
Appellant
Notice
Dated
8/23/75

At this time the Secretary confused my plan of insurance. He confused Sec.215(b)(2)(C).

See Appellee
T.R.40

The Secretary computed a primary insurance amount of \$98.50.

The true primary insurance amount is \$107.80. This is exemplary of the fallibility by the Secretary to find and use the law of 203(b).

202(j)(1)

I became entitled to old age insurance benefits in the year 1965 which is the year before the year of 1966 in which I attained retirement age 65.

203(b)(2)(A)

In the year 1965 I had self employment income in excess of statutory limits which reduced some months to zero payment and provided a benefit entitlement of \$107.80 for the month of January 1966 and the same amount for

(b)(2)(C)

January 1965, a period of two years.

P.L.86-778
74 Stat.962
Sec.303(d)(1)

Pertinent to above, the law of 1960 respecting computations and recomputations states as follows: Section 303 "(d)(1) Effective with respect to individuals who become entitled to benefits under section 202(a) of the Social Security Act after 1960, Section 215(e)(3) of such Act is amended to read as follows:

"(3) if an individual has self employment income in a taxable year which begins prior to the calendar year in which he becomes entitled to old age insurance benefits and ends after the last day of the month preceding the month in which he becomes so entitled, his self employment income in such taxable year shall not be counted in determining his benefit computation years, except as provided in subsection (f)(3)(C)"

74 Stat 963
Sec. 303(e)
(3)(C)

Section 215(f)(3) of such Act is amended to read as follows:

"(C) In the case of an individual who becomes entitled to old age insurance benefits in a calendar year after 1960, if such individual has self employment income in a taxable year which begins prior to such calendar year and ends after the last day of the month preceding the month in which he became so entitled, the Secretary shall recompute such individual's primary insurance amount after the close of such taxable year and shall take into account in determining the individual's benefit computation years only such self employment income in such taxable year as is credited, pursuant to section 212, to the year preceding the year in which he became so entitled. Such recomputation shall be effective for and after the first month in which he became entitled to old age insurance benefits"

and

202(j)(1)

203(b)(f)
215(b)(2)(C)

74 Stat 962
Sec. 303(e)(3)

Section 215(f)(3) of such Act is amended to read as follows:

T.R. 44
202(j)(1)

"(3)(A) Upon application by an individual-
"(i) who became entitled to old age insurance benefits under section 202(a) after December 1960, or

Sec. 215(a)(1)(3)
Sec. 203(b)(f)

"(ii) whose primary insurance amount was recomputed as provided in paragraph (2)(B)(ii) of this subsection on the basis of an application filed after December 1960,

T.R.44

Sec.215(a)(1)
Sec.203(a)(b)
(f)

202(j)(1) and
(b)(2)(c)

(b)(2)(c)
2 years

the Secretary shall recompute his primary insurance amount if such application is filed after the calendar year in which he became entitled to old age insurance benefits or in which he filed application for the recomputation of his primary insurance amount under clause (ii) of this sentence, whichever is the later. Such recomputation under this subparagraph shall be made as provided in subsection (a) (1) and (3) of this section, except that such individual's computation base years referred to in subsection (b)(2) shall include the calendar year referred to in the preceding sentence. Such recomputation under this subparagraph shall be effective for and after the first month for which his last previous computation of his primary insurance amount was effective, but in no event for any month prior to the twenty fourth month before the month in which the application for such recomputation is filed"

At this point it is revealed that the appellee failed to give appellant proper insurance.

79 Stat.363
Sec.301(b),
Sec.215(c)

72 Stat 1016
42USC415

In Public Law 89-97 79 Stat 363, from which law appellant born in 1901 shall receive his plan of insurance for and after December 1964 as follows:

"(b) Section 215(c) of such Act is amended to read as follows:

"(c)(1) For the purposes of column II of the table appearing in subsection (a) of this section, an individual's primary insurance amount shall be computed as provided in and subject to the limitations specified in, (A) this section as in effect prior to the enactment of the Social Security Amendments of 1965, and (B) the applicable provisions of the Social Security Amendments of 1960."

(2) The provisions of this subsection shall be applicable only in the case of an individual who became entitled to benefits under section 202(a) or section 223 before the date of enactment of the Social Security Amendments of 1965 or who died before such date."

P.L. 74-271
Sec. 202(a)
42 USC S. 402

I am such an individual as was born in January 1901, became entitled to an old age insurance benefit in January 1966.

In formulating my insurance plan, the appellee acted without regard to except as may be otherwise provided, and planned an improper insurance.

Explanations of Improper Insurance

P.L. 89-97
79 Stat. 364
42 USC S. 401

(A)"(d) The amendments made by subsections (a), (b), and (c) of this section shall apply with respect to monthly benefits under Title II of the Social Security Act for months after December 1964"

79 Stat. 363
72 Stat. 1016
42 USC S. 415
74 Stat. 924
42 USC 301 Note.

A man born in January 1901 is entitled to a first month benefit in January 1965 not administratable in the "Amendments of 1965". Is administratable in the Act of 1958 and 1960 Act pursuant to section 215(c) amended in "(c)(1)(2)" of the 1965 Act, and

P.L. 89-97
79 Stat. 366 Sec 302(f)

"(f)(1) The amendments made by subsection (c) shall apply only to individuals who become entitled to old age insurance benefits under section 202(a) of the Social Security Act after 1965"

P.L. 89-97
79 Stat. 364-5
Sec. 302(a)(1)
Sec. 302(a)(3)

(C) Appellee planned from the provisions of the "Amendments of 1965" applied subparagraph (C) of section 215(b)(2) and (b)(4) thereof and did not heed the advert "except that it shall not apply to any such individual for purposes of monthly benefits for months before January 1966." Failed to heed the exception in:
"(b)(5) For the purposes of column III of the table appearing in subsection (a) of this section, the provisions of this subsection, as in effect prior to the enactment of the Social Security Amendments of 1965, shall apply-

"(A) in the case of an individual to whom the provisions of this subsection are not made applicable by paragraph (4), but who, on or after the date of the enactment of the Social Security Amendments of 1965 and prior to 1966, met the requirements of this paragraph or paragraph (4), as in effect prior to such amendment"

Thus shown, appellee's factual allegations are irrelevant to appellant's status for a proper plan of insurance.

The Issue Resolved

20 CFR
USCA TITLE 42

sec.215(b)(2)(C)

sec.203(a)(b)(f)

sec.203(b)(2)(A)
sec.215(f)(2)(E)

P.L.92-5
85Stat.7
Sec.201(a)Sec.215(a)
42USC Sec.415
85Stat.9
Sec.201(e)
42USC Sec.401
85Stat.6
Sec.215(c)

P.L.92-336
86Stat.407
Sec.201(a)(e)
Sec.215(c)(2)
42USC Sec.402

1. January 1971 was the first month in which I was entitled to an old age insurance benefit after January 1969.

2. The period between after January 1969 and January 1971 is 24 months.

3. My benefit for all months in 1970 was zero.

4. As a result thereof my benefit entitlement was increased to \$184.70 for December 1970 payable beginning January 1971.

5. \$184.70 multiplied by 110% or \$203.20 is my benefit for January 1971.

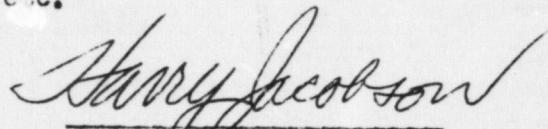
6. \$203.20 is my benefit for August 1972 and multiplied by 120% or \$243.90 is my benefit for September 1972.

WHEREFORE, appellant respectfully requests the Court to remand my case to the appellee to settle order to rewrite my plan of insurance, for me to confirm and assent, whereupon appellee shall certify payment to me of all proper benefits due me.

I further ask the Court to award damages for the delay and the cost of this action.

Yours etc.

DATED: New York, New York
October 21, 1975



HARRY JACOBSON
Appellant

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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HARRY JACOBSON, :
Appellant :

CASE NO.75-7554

-v-

ACKNOWLEDGMENT OF SERVICE
PROOF OF SERVICE

CASPAR WEINBERGER, Secretary, :
Health, Education & Welfare :
Appellee

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PLEASE TAKE NOTICE that of acknowledgment
and proof of service of a copy of BRIEF AND APPENDIX in the
above captioned matter.

Paul J. Curran
HON. PAUL J. CURRAN
United States Attorney
For The Southern District

Dated: New York New York
October 28, 1975

10/28/75